

**FINAL REPORT  
OF ACCION GROUP, INC.  
INDEPENDENT MONITOR  
IN THE  
TRACK B SOLICITATION**

**Attachment No. 21**

**ARIZONA PUBLIC SERVICE COMPANY  
STANDARDS OF CONDUCT  
FOR THE TRACK B  
COMPETITIVE PROCUREMENT PROCESS**

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**March 18, 2003**

STANDARDS OF CONDUCT  
FOR THE TRACK B  
COMPETITIVE PROCUREMENT PROCESS

Arizona Public Service Company (“APS”) is committed to complying with the standards of conduct discussed in the Staff Report on Track B: Competitive Solicitation (October 25, 2002). The following Standards of Conduct shall govern the Competitive Procurement Process and supplement the proposed APS Code of Conduct submitted to the Commission by APS on November 12, 2002. In case of any inconsistency between the APS Code of Conduct and these Standards of Conduct, the Standards of Conduct shall govern with respect to the Competitive Procurement Process unless otherwise ordered or authorized by the Commission. Nothing in these Standards of Conduct shall limit APS’ ability to comply with other applicable federal or state requirements.

I. **Definitions**

“**Affiliate**,” with respect to APS, shall mean any other entity directly or indirectly controlling or controlled by, or under direct or indirect common control with, the public utility. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the power to direct the management policies of such entity, whether through ownership of voting securities, or by contract, or otherwise. Third parties that co-own plants jointly with APS shall not, by virtue of such co-ownership, be considered Affiliates for purposes of these Standards of Conduct.

“**Affiliate Bid Team**” means those employees, officers, directors or contractors of an APS Affiliate that are directly participating in the preparation of a response to an APS request for proposal in the Competitive Procurement Process.

“**APS**” means Arizona Public Service Company as it currently exists, as its name may be changed, or as any successor enterprise.

“**Bidders**” means that subset of Potential Bidders that both (i) meet the minimum standards as established by the Procurement Team and (ii) submit a Letter of Intent to Bid in the Competitive Procurement Process.

“**Commission**” means the Arizona Corporation Commission.

“**Commission Staff**” means those employees and consultants (other than the Independent Monitor) of the Utilities Division of the Commission designated by the Director in writing as participating in the Competitive Procurement Process.

**“Communications Protocol”** means the procedure for communications between the Procurement Team and all Potential Bidders or Bidders in the Competitive Procurement Process. The Communications Protocol is attached hereto as Attachment I and incorporated herein by reference.

**“Competitive Procurement Process”** means the initial Track B solicitation process for APS retail load approved by the Commission and required by Decision No. 65743. The Competitive Procurement Process shall include preparing and conducting the solicitation, evaluating bids and negotiating the definitive agreement(s), but shall not include management or implementation of such agreement(s) after their execution.

**“Confidential Information”** means any and all written, printed or other materials, regardless of form, provided by a Potential Bidder or Bidder to the Procurement Team to meet pre-qualification and creditworthiness requirements. Confidential Information shall also include, but not be limited to, marketing, operational, economic or financial information or data relating to the Potential Bidder or Bidder that is disclosed to the Procurement Team by the Potential Bidder or Bidder during the Competitive Procurement Process, provided that such information or data is marked “Confidential” by the disclosing Potential Bidder or Bidder and further provided that such information or data is not otherwise publicly available.

**“Director”** means the Director of the Utilities Division Staff, or his or her designee.

**“Extraordinary Circumstance”** means any situation that requires APS to act in a manner contrary to these Standards of Conduct to protect system reliability, to protect the public interest, or to ensure the safety of employees or the public.

**“Independent Monitor”** means the individual(s) retained by the Commission to advise Commission Staff regarding the Competitive Procurement Process.

**“Pinnacle West”** means Pinnacle West Capital Corporation as it currently exists, as its name may be changed, or as any successor enterprise.

**“Potential Bidders”** means the list of potential bidders developed by the Procurement Team. With respect to APS Affiliates, the term “Potential Bidder” shall mean the Affiliate Bid Team.

**“Procurement Team”** means those APS and Pinnacle West employees, officers, directors or contractors designated by APS to conduct or assist in conducting the Competitive Procurement Process for APS. As of March \_\_, 2003, the primary members of the Procurement Team include:

- Thomas Carlson – Head of Trading, Retail Procurement
- Steve McAdams – Manager, Power Contracts

- Gary Zhu – Risk Manager
- Brad Albert and Don Stoneberger – Senior Energy Traders
- Randy Young – Senior Transmission Trader
- John Taggart – Quantitative Analyst
- Lisa Williams – Contract Administrator
- Clark Worthley – Credit Risk Manager
- Sue Mabee – Financial Engineer
- Kelly Bond – Administrative Coordinator

APS may change, add to or subtract from the members of the Procurement Team from time to time consistent with these Standards of Conduct.

“**PWEC**” means Pinnacle West Energy Corporation as it currently exists, as its name may be changed, or as any successor enterprise, and its subsidiaries.

“**Shared Services**” means those support services provided by APS or its Affiliates, including but not limited to: human resources; accounting; tax; insurance; risk management; energy risk management; audit services; contract management; information and communication technology; communications; environmental, health and safety; regulatory services; fuel procurement; system dispatch; transportation; security; facilities; shareholder services; law and business practices; public affairs and enterprise finance.

“**Solicitation Web Site**” means the internet web site established by the Procurement Team for communications with Potential Bidders, whether affiliates or not, that are participating in the Competitive Procurement Process, except for communications of Confidential Information relating to pre-qualification and creditworthiness.

## II. **Effective Date**

These Standards of Conduct shall become effective on March 18, 2003, and shall remain effective throughout the Competitive Procurement Process.

## III. **Applicability**

These Standards of Conduct shall apply only to the Competitive Procurement Process.

## IV. **Standards of Conduct**

### A. **Rules Governing Employee Conduct**

Members of the Procurement Team and APS or APS Affiliate employees assisting the Procurement Team:

1. Shall not assist any Potential Bidder during the Competitive Procurement Process in evaluating the solicitation, preparing a bid in response to the solicitation, or negotiating a definitive agreement except as permitted in these Standards of Conduct or the Communications Protocol;
2. Shall not give preferential treatment to APS Affiliates in the Competitive Procurement Process; and
3. Shall comply with other applicable federal and state requirements, including Code(s) of Conduct, affiliate relations or other similar requirements.

B. Extraordinary Circumstances; Shared Services; Non-Competitive Procurement Process Matters

1. Notwithstanding any other provision in these Standards of Conduct, in an Extraordinary Circumstance, the Procurement Team may take whatever steps are necessary to ensure reliability of the APS system, to protect the public interest, or to ensure the safety of employees or the public.
2. The Procurement Team may consult with or utilize Shared Services or other APS employees, officers or directors provided that such consultation or utilization shall not otherwise circumvent these Standards of Conduct.
3. Nothing in these Standards of Conduct or the Code of Conduct shall be construed to prohibit:
  - a. APS, Pinnacle West or PWEC officers and directors from providing corporate oversight, support and governance to their employees so long as such activities do not favor PWEC in the Competitive Procurement Process or provide PWEC with Confidential Information during the Competitive Procurement Process that is not available to all other Potential Bidders; or
  - b. APS or Pinnacle West employees from communicating with PWEC employees about non-Competitive Procurement Process matters.

C. Communications and Information Access

1. All communications relating to the Competitive Procurement Process between the Procurement Team and Potential Bidders or

Bidders shall be conducted in accordance with the Communications Protocol.

2. Once designated, the Procurement Team shall not provide to any Potential Bidder or Bidder preferential access to information substantively affecting the Competitive Procurement Process. This requirement shall not preclude APS from providing information to those entities that jointly own facilities with APS (or for which APS is the operating agent) to the extent such information is otherwise within the scope of information APS provides such entities the normal course of business.
3. Once designated, the Procurement Team shall make available information substantively affecting the Competitive Procurement Process to all Potential Bidders or Bidders at the same time and on equal terms pursuant to the Communications Protocol.
4. The Procurement Team shall not disclose to any Potential Bidder during the Competitive Procurement Process any Confidential Information obtained from another Potential Bidder without the prior written consent of the disclosing party.
5. If a member of the Procurement Team discloses information in a manner contrary to these Standards of Conduct or the Communications Protocol, the Procurement Team shall promptly inform Commission Staff and the Independent Monitor of such disclosure.

D. Mandatory Compliance

1. Written or electronic copies of these Standards of Conduct shall be provided to all APS and APS Affiliate employees.
2. A copy of the Standards of Conduct shall be maintained on the Solicitation Web Site. To qualify as a Bidder, a party must accept these Standards of Conduct and certify that it will, and that it will require its officers, directors, employees and contractors to, comply with these Standards of Conduct to the extent such Standards of Conduct apply to their activities.
3. Training on the requirements of these Standards of Conduct shall be provided to:
  - a. all members of the Procurement Team;
  - b. all members of any Affiliate Bid Team; and

- c. all APS and APS Affiliate employees assisting the Procurement Team or an Affiliate Bid Team in the Competitive Procurement Process.
4. The failure or refusal to abide by or to act according to these Standards of Conduct by a member of the Procurement Team or Affiliate Bid Team, or an APS or APS Affiliate employee assisting the Procurement Team or Affiliate Bid Team in the Competitive Procurement Process may subject the employee to disciplinary action, up to and including termination of employment.

E. Monitoring by Commission Staff and Independent Monitor

1. To the extent practicable, the Procurement Team shall provide to Commission Staff and the Independent Monitor drafts of all Competitive Procurement Process materials for review and comment prior to posting such materials on the Solicitation Web Site.
2. The Procurement Team shall provide to Commission Staff and the Independent Monitor access upon reasonable request to all written records relating to the Competitive Procurement Process and shall make available members of the Procurement Team upon reasonable request for consultation with Commission Staff and the Independent Monitor relating to the Competitive Procurement Process.
3. To the extent practicable, the Procurement Team shall provide Commission Staff and the Independent Monitor with reasonable advance notice of any scheduled or planned oral communications with Potential Bidders or Bidders relating to the Competitive Procurement Process to allow Commission Staff and the Independent Monitor to participate in such communications if desired by Commission Staff or the Independent Monitor.
4. The Procurement Team shall log all oral communications with Potential Bidders or Bidders relating to the Competitive Procurement Process consistent with the Communications Protocol and shall make such log available to Commission Staff and the Independent Monitor for review upon reasonable request.

F. Procedure to Modify the Standards of Conduct

APS may modify these Standards of Conduct from time to time after consultation with Commission Staff.



G. Audit Provisions

1. Audits regarding APS' compliance with these Standards of Conduct will be performed by Pinnacle West internal auditors in conformance with its standard audit practices.
2. Commission Staff may audit APS' compliance with these Standards of Conduct either during or within six (6) months of completion of the Competitive Procurement Process.

**ATTACHMENT I  
TO THE  
STANDARDS OF CONDUCT  
FOR THE  
COMPETITIVE PROCUREMENT PROCESS  
  
COMMUNICATIONS PROTOCOL**

- I. Scope: This Communications Protocol applies to all substantive communications between the Procurement Team and Potential Bidders or Bidders relating to the Competitive Procurement Process.
  
- II. General:
  - A. Except as provided in this Communications Protocol or in the Standards of Conduct, the Procurement Team shall not disseminate substantive information relating to the Competitive Procurement Process to any Potential Bidder or Bidder except to the extent such information is provided to all other Potential Bidders or Bidders.
  
  - B. The Procurement Team shall disseminate to Potential Bidders or Bidders substantive information relating to the Competitive Procurement Process by posting such information on the Solicitation Web Site, as set forth in Section III of this Communications Protocol.
  
  - C. Except for the submittal of sealed bids in response to a RFP and any subsequent negotiations or discussions relating to creditworthiness, all substantive communications from a Potential Bidder or Bidder to the Procurement Team relating to the Competitive Procurement Process shall be submitted to the Procurement Team through the Solicitation Web Site.
  
- III. Solicitation Web Site and Communications:
  - A. Written Communications and Documentation:
    - 1. Except as otherwise provided in this Communications Protocol, all written communications between the Procurement Team and Potential Bidders or Bidders relating to the Competitive Procurement Process shall be done through the Solicitation Web Site.
  
    - 2. The Procurement Team shall maintain hard copies of all electronic communications between the Procurement Team and Potential

Bidders or Bidders, as well as other written documents, relating to or submitted during the Competitive Procurement Process for the life of the longest agreement resulting from such process, plus five (5) years. Electronic communications may be printed in hard copy and then deleted from the electronic system.

B. Oral Communications:

1. The Procurement Team shall maintain a log of all oral communications between the Procurement Team and any Potential Bidder or Bidder during and relating to the Competitive Procurement Process. The requirement to log such communications shall not apply to communications:
  - a. between legal counsel for APS and a Potential Bidder or Bidder, provided that such communications shall not be a conduit for transmitting substantive information affecting the Competitive Procurement Process in a manner inconsistent with the Standards of Conduct;
  - b. made during workshops, administrative hearings or similar proceedings of the Commission or other regulatory agency;
  - c. made during Bidders Conferences or similar meetings; or
  - d. that are covered by the attorney-client privilege.
2. The log of covered communications shall be generally in the form attached as Exhibit A.

C. Solicitation Web Site:

1. Information relating to the Competitive Procurement Process shall be made available to Potential Bidders, Bidders, the Commission, Commission Staff and the Independent Monitor through the Solicitation Web Site. The Procurement Team shall provide Potential Bidders, Commission Staff and the Independent Monitor who submit a request through the Solicitation Web Site with an identifier and password to access the information on the Solicitation Web Site.
2. The Procurement Team, after consultation with Commission Staff and the Independent Monitor, shall determine what information will be posted on the Solicitation Web Site, but such information shall include:

- a. Pre-qualification requirements for becoming a Bidder, including minimum creditworthiness requirements;
- b. Request for Proposal;
- c. Form agreement(s);
- d. Form Letter of Intent to Bid;
- e. Bidder Certification;
- f. Deliverability Analysis;
- g. RMR Study;
- h. Load & Resource Plan;
- i. APS Ten Year Plan; and
- j. Questions & Answers.

D. Bidder Specific Information:

- 1. Bidders may be provided access to certain additional information relating to the Competitive Procurement Process. If so, a Bidder's identifier(s) and password(s) will be coded to provide access to such information.
- 2. The Procurement Team, after consultation with Commission Staff and the Independent Monitor, shall determine what information falls within this category.

## EXHIBIT A

### Track B Communication Log

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